

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1058 of 1995

in

SPECIAL CIVIL APPLICATION No 3202 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MI MERCHANT

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Appellant

MR MA BUKHARI ASSTT GOVT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/98

ORAL JUDGEMENT

#. Admitted. Mr.M.A.Bukhari, learned Asstt. Government Pleader appears for the respondents and waives service of

notice of admission on behalf of the respondents. In the facts and circumstances of the case, this matter is taken up for final hearing today.

#. This appeal is filed against the judgment and order passed by the learned Single Judge dismissing Special Civil Application No : 3202 of 1989 on October 17,1995..

#. The appellant is the original petitioner. He made grievance that an order rejecting the application for exemption under sub section (1) of section 20 of Urban Land (Ceiling and Regulation) Act,1976 (hereinafter referred to as 'Act') was illegal and contrary to law. When the petition came up for final hearing, the learned Single Judge observed that "irrespective of merits of the matter, the land holders could not be permitted to sell the disputed land in favour of the petitioner by claiming exemption under sub-section 20 of the Act in view of the binding ruling of the Hon'ble Supreme Court in S.Vasudeva Vs. State of Karnataka AIR 1994 SC 923." In view of the binding decision of the Supreme Court, learned Single without entering into merits of the matter, dismissed the petition.

#. It is clear that after the decision in S.Vasudeva, a Division bench of three Judges of the Hon'ble Supreme Court in T. R. Thandur Vs. Union of India, AIR 1996 SC 1643, specifically overruled the law laid down in S.VASUDEVA.

#. In view of the fact that the decision in S.Vasudeva was overruled in a subsequent decision, in our opinion, LPA deserves to be allowed and is accordingly allowed and the judgment and order passed by the learned Single Judge is quashed and set aside. The matter will now go back to the learned Single Judge to decide the same in accordance with law.

#. We may also clarify that we have not expressed any our opinion on merits of the matter and at the time of the hearing, the learned Single Judge will decide the matter on its merits. Appeal is allowed. No order as to costs.

(C.K.Thakkar,J.)

Date : 25-9-1998 (A.M.Kapadia,J.)

(KPP)